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CITY OF CHICO POLICE DEPARTMENT

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

BOBBY WARREN; ANDY LAMBACH;
JONATHON WILLIAMS; MICHAEL
SAMUELSON; TRACY MILLER; TONA
PETERSEN; CAROL BETH THOMPSON;
CHRISTA STEVENS,

Plaintiffs,

vs.

CITY OF CHICO; CITY OF CHICO
POLICE DEPARTMENT,

Defendants.

) Case No. 2.21-cv-00640-MCE-DMC

) Judge: Hon. Morrison C. England, Jr.

) **DECLARATION OF VINCENT C. EWING**
) **IN SUPPORT OF DEFENDANTS'**
) **OPPOSITION TO MOTION FOR**
) **INTERVENTION FILED BY CHICO**
) **STEWARDS FOR PARKS AND**
) **WATERWAYS, MICHELE COOPER, AND**
) **SARAH STAFFORD**

) [Filed concurrently with Opposition and
) Evidentiary Objections to the Decls. of Ken
) Mollison, Rick Shanks, Andy Willhoit, Matt
) Gallaway, Brian Perry, Robert Berry-Stewards,
) Michele Cooper, Jody Gallaway, and Sarah
) Stafford]

) Hearing: Vacated
)
)

DECLARATION OF VINCENT C. EWING

I, Vincent C. Ewing, declare and state as follows:

1. I am an attorney at law duly admitted to practice law in the United States District Court for the Eastern District of California. I am the Senior Partner with the Law Offices of Alvarez-Glasman & Colvin, attorneys of record for Defendants City of Chico and Chico Police Department (“Defendants”). I serve as the City Attorney for the City of Chico. The facts stated herein are personally known to me. If called as a witness, I could and would competently testify thereto.

2. I make this declaration in support of Defendants’ Opposition to the Motion for Intervention filed by Proposed Intervenors Chico Stewards for Parks and Waterways, Michele Cooper and Sarah Stafford.

3. At the Chico City Council Meeting held on November 16, 2021, I presented to the City Council the ordinance and staff report to amend Title 16R of the City of Chico Municipal Code by adopting and amending by reference the California Building Code, Appendix O, and the California Residential Code, Appendix X, relating to Emergency Housing Standards. The City Council adopted the ordinance. Attached hereto as Exhibit “A” is a true and correct copy of the November 16, 2021 Staff Report and proposed ordinance.

I declare under penalty of perjury to the laws of the United States of America that the foregoing is true and correct. Executed this 18th day of November 2021 at Long Beach, California.

Vincent C. Ewing

Vincent C. Ewing

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Eastern District of California by using the Court's CM/ECF system on November 18, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/S/ *Liza Slaughter*

Liza Slaughter

4855-6823-5012, v. 4

Exhibit A



City Council Agenda Report

Meeting Date: November 16, 2021

TO: Honorable Mayor and City Council

FROM: Vincent Ewing, City Attorney

BY: Mark Murray, Deputy City Attorney

RE: Proposed ordinance amending Title 16R of the City of Chico Municipal Code by adopting by reference the 2019 California Building Code, Appendix O – Emergency Housing, as amended, and readopting by reference the 2019 California Residential Code, Appendix X – Emergency Housing, as amended

RECOMMENDATION:

The City Council of the City of Chico adopt an ordinance, modifying City of Chico Municipal Code Sections 16R.02.010 and 16R.12.010 of Chapter 16R.02 - Building Standards, by adopting by reference the 2019 California Building Code (“CBC”), Appendix O - Emergency Housing, and the 2019 California Residential Code (“CRC”), Appendix X - Emergency Housing as amended.

SUMMARY:

State law mandates all local jurisdictions enforce the California State Building Standards (Title 24 of the California Code of Regulations) in the construction and maintenance of all buildings and structures. These standards include provisions of the nationally recognized model Building Code and model Residential Code, and are updated on a tri-annual basis. During a shelter crisis declaration, local minimum standards for emergency shelters must at least meet the requirements of Appendix X of the CRC and Appendix O of the CBC (the “Appendices”), unless the requirements cannot be met and how alternative standards protect health and safety. The City previously adopted and enforces the 2019 CBC and CRC.

The proposed ordinance (1) corrects a clerical error in the Municipal Code by adopting Appendix O of the 2019 CBC to replace the inapplicable Appendix N, and (2) readopts Appendix X of the CRC with amendments. The Appendices were developed by the California Building Standards Commission specifically to provide less restrictive requirements for temporary, movable structures to help address the State of California’s ongoing housing and shelter crisis. Local amendments to the Appendices are permitted to vary from the State’s model code language if a housing emergency or shelter crisis is declared and the local amendments reasonably ensure public health and safety. For the Appendices, with local amendments, to be applicable to the City, they must be adopted by the City through an ordinance.

City of Chico Staff Report – Adoption of CBC Appendix O and X

DISCUSSION:

On October 5, 2021, City Council resolved to declare a local shelter crisis in the City of Chico.

California Government Code Section 8698.4 permits cities that have declared a local shelter crisis to suspend provisions of any state housing, health, habitability, planning and zoning or safety standards, procedures or laws, provided the City has adopted local standards and procedures for emergency housing consistent with ensuring public health and safety.

For a city that adopts an ordinance establishing reasonable local standards, those standards must meet the standards provided in the 2019 CBC Appendix O - Emergency Housing ("Appendix O") and the 2019 CRC Appendix X – Emergency Housing ("Appendix X"). Appendix X is identical to Appendix O, with the only difference being the type of structures subject to their requirements.

On November 5, 2019, the City Council adopted, by reference, the 2019 CBC, including Appendix N - Emergency Housing ("Appendix N"), and the 2019 CRC, including Appendix X. Between the 2016 and the 2019 versions of the California Building Code, Appendix N had been amended to become Appendix O - Emergency Housing ("Appendix O"). Therefore, when the City Council expressed its intent to adopt the 2019 Building Code, including the appendix regarding Emergency Housing, it intended to adopt Appendix O, rather than Appendix N.

Although Council's intent was clear, to correct the clerical error, Staff proposes adoption of Appendix O by reference, with local amendments, to the Chico Municipal Code. Staff further recommends to adopt changes to Appendix X to ensure the Appendices remain substantively equivalent.

Local amendments to the Appendices are permitted to vary from the State's model code language, if a housing emergency is declared and the local amendments reasonably ensure public health and safety. Staff proposes an amendment of the Appendices to provide the City more flexibility in the floor area per occupant, and to allow alternatives that are reasonably equivalent to the requirements in the model codes.

Locally, minimum floor area is a concern due to the inability to find emergency sleeping cabins meeting the current minimum standard, in the timeframe necessary to address the homeless crisis in the City. Staff propose to reduce the minimum interior floor area of emergency sleeping cabins from seventy (70) square feet for one occupant, to sixty-four (64) square feet for two occupants.

Further, the concept of alternatives to the design, materials and/or methods of building code standards is well documented within the model building codes. The Appendices for emergency housing do not include a provision recognizing alternatives. To afford more flexibility, staff is proposing a provision allowing alternatives, provided the alternative is reasonably equivalent to the standards contained within the Appendices.

Finally, the Appendices are only in effect during a declared “State of Emergency, Local Emergency or Shelter Crisis.”

FISCAL IMPACT:

No funds are being requested as a part of this report or with the adoption of this ordinance.

ALTERNATIVE ACTIONS:

As an alternative, the City Council could:

1. Not adopt the ordinance amending the City of Chico Municipal Code Sections 16R.02.010 and 16.12.010 of Title 16R Building Standards, Chapter 16R.02, by adopting by reference the 2019 California Building Code, Appendix O – Emergency Housing and the 2019 California Residential Code, Appendix X – Emergency Housing, as amended; or
2. Provide additional direction to staff.

DISTRIBUTION:

City Clerk (3)

ATTACHMENTS:

Exhibit “A” – Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF CHICO AMENDING TITLE 16R OF
THE CITY OF CHICO MUNICIPAL CODE TO ADOPT AND AMEND
BY REFERENCE THE CALIFORNIA BUILDING CODE APPENDIX O
AND CALIFORNIA RESIDENIAL CODE APPENDIX X, RELATING
TO EMERGENCY HOUSING STANDARDS**

WHEREAS, on October 5, 2021, the City Council of the City of Chico (“City”) unanimously declared a Shelter Crisis in the City, and those conditions and findings are still relevant and in effect now; and

WHEREAS, pursuant to California Government Code section 8698.4, the City, in lieu of compliance with local building approval procedures or state housing, health, habitability, planning and zoning, or safety standards, procedures, and laws, may adopt by ordinance reasonable local standards and procedures for the design, site development, and operation of homeless shelters and the structures and facilities therein, to the extent that it is determined at the time of adoption that strict compliance with state and local standards or laws in existence at the time of that adoption would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis; and

WHEREAS, an ordinance establishing reasonable local standards must, at a minimum, meet the standards provided in the 2019 California Building Code Appendix O and the 2019 California Residential Code Appendix X, and any future standards adopted by the Department of Housing and Community Development related to emergency housing or emergency housing facilities, unless the City adopts findings stating why the standards cannot be met and stating how the standards in the ordinance protect health and safety; and

WHEREAS, on November 19, 2019, the City Council adopted the 2019 California Residential Standards Code, including its Appendix X – Emergency Housing Standards; and

WHEREAS, on November 19, 2019, the City Council adopted the 2019 California Building Standards Code and included in the adoption certain appendices thereto, including “Appendix N – Emergency Housing Standards”; and

1 WHEREAS, the adoption of Appendix N was intended to adopt the California Building Code
2 appendix regarding Emergency Housing Standards, which due to a restructuring of the 2019
3 Building Code, is now Appendix O; and

4 WHEREAS, adopting the revised Emergency Housing Standards of the California Residential Code
5 and the California Building Code (collectively, the “Emergency Housing Standards”) is necessary
6 and appropriate to correct a prior clerical error and effectuate the intent of the City Council, and

7 WHEREAS, the City Council has determined that strict compliance with the standard provisions of
8 these Emergency Housing Standards for public facilities open to the homeless would prevent,
9 hinder, or delay the mitigation of the effects of the shelter crisis; and

10 WHEREAS, local amendments are necessary to address the threat to public health, safety, and
11 welfare of the general public and homeless individuals living in the City without shelter by
12 increasing the number of emergency shelter beds available in the City, thereby providing shelter to
13 additional individuals whose health, safety, and welfare are threatened by their unsheltered status.
14

15 NOW, THEREFORE, BE IT ORDAINED that the Council of the City of Chico does hereby adopt
16 the following ordinance amending Title 16R of the City of Chico Municipal Code:

17 SECTION 1. Findings. As provided for in Government Code Section 8698 et seq., the Council of
18 the City of Chico expressly finds the proposed modifications to Appendix X of the California
19 Residential Code and Appendix O of the California Building Code decreasing the minimum interior
20 floor area of emergency sleeping cabins to 64 square feet for two occupants, and an additional 50
21 square feet for each additional occupant, is reasonably necessary to address the threat to public
22 health, safety, and welfare of the general public and homeless individuals living in the City without
23 shelter. The harsh summer and winter conditions, as well as the high risk of dangerous air quality
24 levels due to wildfires in and around the City places the health and lives of the increasing
25 unsheltered homeless population at risk and makes it reasonably necessary to adopt these
26 amendments to the Emergency Housing Standards, and without such amendments the standards of
27 Appendix X and Appendix O cannot be met. The proposed amendments would also extend the use
28 of limited emergency shelter resources and provide additional shelter to more homeless individuals.

1 Strict compliance with the standard provisions of the Emergency Housing Standards for public
2 facilities open to the homeless would prevent, hinder, or delay the mitigation of the effects of the
3 City's shelter crisis. The proposed amendment to the local building code, applicable during a shelter
4 crisis, will assist in meeting emergency housing demands for individuals needing essential, safe, and
5 sanitary shelter and diversion from homelessness and would expeditiously move homeless
6 individuals out of harsh environs.

7 SECTION 2. City Code Amendment. The City Council of the City of Chico hereby amends Title
8 16R of the City of Chico Municipal Code as follows:

9 **Chapter 16R.02 Building Standards**

10 **Section:**

11 **16R.02.010 Adoption of Standards.**

12 **16R.02.010 Adoption of Standards.**

13
14
15 A. Basic Building Standards. The following regulations, hereby adopted by reference and
16 incorporated herein, shall constitute the basic building standards of the city and shall apply
17 to and govern the construction, alteration, moving, demolition, repair, use, and occupancy of
18 any building or structure in the city in accordance with the provisions of
19 Section 16.06.020 of this code.

20 1. All regulations adopted in the 2019 California Building Code ("CBC"), as promulgated
21 in Part 2, Volumes 1 and 2, Appendix H (Signs), Appendix J (Grading) and Appendix ~~NO~~
22 (Emergency Housing), as amended herein, of Title 24 of the California Code of Regulations,
23 including all regulations adopted in the CBC amending or repealing a volume, chapter, section or
24 appendix of the International Building Code ("IBC"), which regulations shall take precedence
25 over the amended or repealed volume, chapter, section or appendix of the IBC; and

26 2. All regulations adopted in this chapter, including any regulations adopted in this chapter
27 which amend or repeal a volume, chapter, section or appendix of either the IBC or CBC, shall
28

1 take precedence over the amended or repealed volume, chapter, section or appendix of the IBC
2 or CBC.

3 B. Existing Building Code. The following regulations, hereby adopted by reference and
4 incorporated herein, shall constitute the minimum standards to promote public safety and
5 welfare, including those regulations adopted to reduce the risk of death or injury that may result
6 from the effects of earthquakes on existing unreinforced masonry bearing walls.

7 1. All regulations set forth in the following volumes, chapters, sections, parts or appendices
8 of the 2019 CBC Part 10 of Title 24 based on the 2018 International Existing Building Code:

- 9
10 a. Appendix A Chapters A1, A3, and A4; and
11 b. Appendix A Chapter A6 Referenced Standards.

12 C. Historic Building Code. The following regulations, hereby adopted by reference and
13 incorporated herein, shall constitute the standards for the preservation, restoration, rehabilitation,
14 relocation or reconstruction of buildings or properties designated as qualified historical buildings
15 or properties.

16 1. All regulations set forth in the following volumes, chapters, sections, parts or appendices
17 of the 2019 CBC Part 8 of Title 24:

- 18
19 a. Chapter 8-1, excluding Section 8-104, entitled "Review and Appeals";
20 b. Chapter 8-2 through 8-10; and
21 c. Appendix A.

22 D. California Code of Regulations, Title 24, Part 2, California Building Code, Appendix O,
23 Emergency Housing is hereby adopted in full, subject to the modifications thereto which are set
24 forth below:

25
26 **AO103.2.1 New additions, alterations, and change of occupancy.** New additions, alterations, and
27 change of occupancy to existing buildings shall comply with the requirements of the California
28 Building Standards Code effective at the time of addition, alteration, or change of occupancy. The

1 requirements shall apply only to and/or within the specific area of the addition, alteration, or change
2 of occupancy.

3 **Exceptions:**

4
5 1. Existing buildings and structures used for emergency housing and emergency housing
6 facilities may not be required to comply with the California Energy Code, as determined by
7 the enforcing agency.

8 2. Change in occupancy shall not mandate conformance with new construction requirements
9 set forth in the California Building Standards Code, provided such change in occupancy
10 meets the minimum requirements set forth in this appendix.

11 **AO103.3 Occupant load.** Except as otherwise stated in this appendix, the maximum occupant load
12 allowed in buildings and structures used as emergency housing shall be determined by the enforcing
13 agency, but the interior floor area shall not be less than 64 square feet (6.5 m²) for two occupants.
14 Where more than two persons occupy the building/structure, the required floor area shall be
15 increased at the rate of 50 square feet (4.65 m²) for each occupant in excess of two. The interior floor
16 area shall not exceed 400 square feet (37 m²), excluding lofts.

17 **Exceptions:**

18 1. Tents.

19
20 2. Recreational vehicles and park trailers designed for human habitation that meet the
21 requirements in the Health and Safety Code, Sections 18009.3 and 18010, as applicable.

22 **SECTION O111**

23
24 **ALTERNATIVES AND MODIFICATIONS**

25 **AO111.1 Alternatives and modifications.** Alternative compliance and/or modifications that are
26 reasonably equivalent to the requirements in this appendix may be granted by the Local
27 Administrative Authority in individual cases when dealing with buildings or structures used for
28 emergency housing.

SECTION 3. City Code Amendment. The City Council of the City of Chico hereby amends Title 16R of the City of Chico Municipal Code as follows:

Chapter 16R.12 Residential Standards

Section:

16R.12.010 Adoption of Standards.

16R.12.010 Adoption of Standards.

A. Basic Residential Standards. The following regulations, hereby adopted by reference and incorporated herein, shall constitute the residential standards of the city and shall apply to and govern the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses, as designated and defined in the 2019 California Residential Code.

B. All regulations adopted in the 2019 California Residential Code ("CRC"), as promulgated in Part 2.5 of Title 24 of the California Code of Regulations including Appendix H, and Appendix X (Emergency Housing), as amended herein, and all regulations adopted in the CRC amending or repealing a volume, chapter, section or appendix of the 2019 International Residential Code ("IRC"), which regulations shall take precedence over the amended or repealed volume, chapter, section or appendix of the IRC.

C. California Code of Regulations, Title 24, Part 2.5, California Residential Code, Appendix X, Emergency Housing is hereby readopted in full, subject to the modifications thereto which are set forth below:

AX103.2.1 New additions, alterations, and change of occupancy. New additions, alterations, and change of occupancy to existing buildings shall comply with the requirements of the California Building Standards Code effective at the time of addition, alteration, or change of occupancy. The

1 requirements shall apply only to and/or within the specific area of the addition, alteration, or change
2 of occupancy.

3 **Exceptions:**

4
5 1. Existing buildings and structures used for emergency housing and emergency housing
6 facilities may not be required to comply with the California Energy Code, as determined by
7 the enforcing agency.

8 2. Change in occupancy shall not mandate conformance with new construction requirements
9 set forth in the California Building Standards Code, provided such change in occupancy
10 meets the minimum requirements set forth in this appendix.

11 **AX103.3 Occupant load.** Except as otherwise stated in this appendix, the maximum occupant load
12 allowed in buildings and structures used as emergency housing shall be determined by the enforcing
13 agency, but the interior floor area shall not be less than 64 square feet (6.5 m²) for two occupants.
14 Where more than two persons occupy the building/structure, the required floor area shall be
15 increased at the rate of 50 square feet (4.65 m²) for each occupant in excess of two. The interior floor
16 area shall not exceed 400 square feet (37 m²), excluding lofts.

17 **Exceptions:**

18 1. Tents.

19
20 2. Recreational vehicles and park trailers designed for human habitation that meet the
21 requirements in the Health and Safety Code, Sections 18009.3 and 18010, as applicable.

22 **SECTION X111**

23
24 **ALTERNATIVES AND MODIFICATIONS**

25 **AX111.1 Alternatives and modifications.** Alternative compliance and/or modifications that are
26 reasonably equivalent to the requirements in this appendix may be granted by the Local
27 Administrative Authority in individual cases when dealing with buildings or structures used for
28 emergency housing.

1 SECTION 4. This Ordinance is consistent with the City's General Plan, Municipal Code, and
2 applicable federal and state law.

3 SECTION 5. This Ordinance will not be detrimental to the public interest, health, safety,
4 convenience or welfare.

5
6 SECTION 6. CEQA. The City Council, on the basis of the whole record and exercising
7 independent judgment, finds that this Ordinance is exempt from the provisions of the California
8 Environmental Quality Act (CEQA) under Public Resources Code section 21080(b)(4) for specific
9 actions necessary to prevent or mitigate an emergency. The proposed ordinance is also exempt under
10 Public Resources Code section 21065 and CEQA Guidelines sections 15060 (c)(2) and 15378(a)
11 because it does not have the potential for resulting in a direct physical change in the environment or
12 a reasonably foreseeable indirect physical change in the environment since there would be no
13 tangible physical change to the environment that is perceptible to the senses. Finally, the proposed
14 ordinance is exempt under CEQA Guidelines Section 15061(b)(3). because it can be seen with
15 certainty that there is no possibility that the activity in question may have a significant effect on the
16 environment.

17 SECTION 7. Severability. If any section, subsection, line, sentence, clause, phrase, or word of this
18 Ordinance is for any reason held to be invalid or unconstitutional, either facially or as applied, by a
19 decision of any court of competent jurisdiction, such decision shall not affect the validity of the
20 remaining portions of this Ordinance. The City Council of the City of Chico hereby declares that it
21 would have passed this Ordinance, and each and every individual section, subsection, line, sentence,
22 clause, phrase, or word without regard to any such decision.

23 SECTION 8. Effective Date. The Ordinance shall be effective 30 days after adoption by the City
24 Council.

25 SECTION 9. Certification. The City Clerk shall certify to the passage and adoption of this
26 Ordinance and shall cause the same to be published or posted in the manner required by law.

27 THE FOREGOING ORDINANCE was adopted by the City Council of the City of Chico at its duly
28 noticed meeting held on November 16, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:
DISQUALIFIED:

ATTEST:

Deborah R. Presson, City Clerk

APPROVED AS TO FORM:

Vincent C. Ewing, City Attorney*
*Pursuant to The Charter of the City of Chico,
Section 906(E)